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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-804

Filed 19 August 2026

Mecklenburg County, Nos. 20CR239943-590, 21CR015715-590

STATE OF NORTH CAROLINA

v.

DARIUS KEITH RAINEY

Appeal by defendant from judgment entered 25 January 2025 by Judge J. Thomas Davis in Mecklenburg County Superior Court. Heard in the Court of Appeals 12 March 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Kyle Peterson, for the State.

Jackie Willingham for defendant.

FREEMAN, Judge.

Darius Keith Rainey (defendant) appeals from judgment entered upon a jury verdict finding him guilty of felony larceny from the person. After careful review, we conclude that defendant received a fair trial free from error.

I. Factual and Procedural Background

On 30 November 2020, shortly after 2:00 A.M., defendant and an unidentified

male (the UM) entered a Circle K in Charlotte, North Carolina, where the assistant manager (the Clerk) was working the night shift. After defendant and the UM said that they were going to buy beer, the Clerk informed defendant and the UM that they were not allowed to purchase beer at the time. When the UM entered the walk-in cooler and took two cases of beer, the Clerk approached the cooler and again informed the UM and defendant that they could not purchase beer. Then, the UM pushed the cooler door to exit the cooler, causing the cooler door to hit the Clerk. The Clerk pushed back against the cooler door, and the Clerk and the UM lost their balance while struggling over the beer. Defendant then approached the Clerk from behind and struck the Clerk in the face. The Clerk retreated behind the counter and called the police. The UM exited the store with the two cases of beer, came back into the store, took two additional cases of beer, and exited the store again. While the Clerk was on the phone with police, the Clerk observed defendant take a case of Modelo beer—which was previously placed on the counter by another customer—off the counter and exit the store. Defendant and the UM then fled the scene.

Defendant's trial began on 22 January 2024 in Superior Court, Mecklenburg County. The jury instructions included the following possible verdicts: common law robbery, felonious larceny, misdemeanor larceny, and felonious conspiracy. The jury returned a verdict finding defendant guilty of felonious larceny. The trial court sentenced defendant to an active sentence of a minimum of 90 months and a maximum of 120 months. Defendant gave written notice of appeal.

II. Jurisdiction

This Court has jurisdiction to hear this appeal from a final judgment of a Superior Court pursuant to N.C.G.S. §§ 7A-27(b) and 15A-1444(a) (2025).

III. Standard of Review

We review challenges to the trial court’s jury instructions de novo. *State v. Austin*, 279 N.C. App. 377, 386 (2021). Under de novo review, this Court “considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Hicks*, 243 N.C. App. 628, 639 (2015).

IV. Discussion

Defendant argues on appeal that the trial court erred by instructing the jury on larceny from the person. Specifically, defendant argues that the instruction was not supported by evidence and that there is a reasonable possibility that the jury would have returned a verdict on misdemeanor larceny had the court not instructed on larceny from the person. We disagree.

A trial court “must instruct on the evidence as it arises in the case being tried.” *State v. Harden*, 42 N.C. App. 677, 681 (1979); *see also Harris v. Guyton*, 54 N.C. App. 434, 435 (1981) (stating that a trial court may instruct a jury on a particular issue when sufficient evidence is presented to warrant that instruction). “It is for the jury to decide what weight and what inferences it will draw from that evidence.” *Id.* Only when jury instructions are given without supporting evidence is a new trial required. *State v. Porter*, 340 N.C. 320, 332 (1995).

The elements of common law larceny are “that [the defendant] (a) took the property of another; (b) carried it away; (c) without the owner’s consent; and (d) with the intent to deprive the owner of his property permanently.” *State v. Hsiung*, 291 N.C. App. 104, 115 (2023) (quoting *State v. Jones*, 369 N.C. 631, 633 (2017)). Larceny is a felony when committed from the person. N.C.G.S. § 14-72(b)(1). To determine whether the trial court properly instructed the jury on larceny from the person, we assess whether substantial evidence supports the “from the person” element.

“[F]or larceny to be ‘from the person,’ the property stolen must be in the immediate presence of and under the protection or control of the victim *at the time it is taken*.” *State v. Barnes*, 345 N.C. 146, 149 (1996) (citing *State v. Buckom*, 328 N.C. 313, 318 (1991)). Whether property was taken from the person’s immediate presence, and under the victim’s protection or control, depends on the circumstances surrounding the taking. *See State v. Lee*, 88 N.C. App. 478, 479 (1988); *Buckom*, 328 N.C. at 318. Property is under the person’s protection when, among other things, it remains “under the person’s eye.” *State v. Greene*, 251 N.C. App. 627, 632 (2017) (citing *Buckom*, 328 N.C. at 318). For example, property may be under the person’s eye when “a jeweler places diamonds on a counter for inspection by a customer.” *Buckom*, 328 N.C. at 318.

Physical proximity from the victim is relevant when determining protection and control. *See Buckom*, 328 N.C. at 318 (holding the defendant committed larceny from the person by taking money from the cash register while the cashier was

standing in front of register making change); *State v. Wilson*, 154 N.C. App. 686, 688 (2002). Similarly, a victim’s awareness “of the theft at the time of the taking . . . is relevant to protection and control.” *State v. Boston*, 165 N.C. App. 890, 893 (2004); see *State v. Sheppard*, 228 N.C. App. 266, 270 (2013).

In *State v. Sheppard*, this Court affirmed a conviction for larceny from the person where the defendant took the victim’s purse from a shopping cart that was “right beside” the victim, the victim noticed the defendant pass by her and then noticed that her purse was gone. 228 N.C. App. 266, 269 (2013). Similarly, in *State v. Hull*, we held that the trial court did not err in denying a motion to dismiss a charge of larceny from the person where the defendants stole a laptop computer located “about three feet from” the victim while the victim took a momentary break from doing homework on the laptop. 236 N.C. App. 415, 417–19 (2014).

However, in *State v. Barnes*, our Supreme Court held that the evidence did not support a conviction for larceny from the person where the defendant stole a bank bag from below the register of an unattended shopping mall kiosk when the kiosk salesperson was 25 to 30 feet away talking to a mall employee. 345 N.C. at 147, 150–51. Likewise, in *State v. Lee*, we held that evidence did not support larceny from the person when defendant took the victim’s shoulder bag from her unattended shopping cart after the victim “took ‘four or five’ steps away” from her cart for a couple of minutes to help the defendant’s accomplice look for goods. 88 N.C. App. at 479. There, we held that the evidence did not support a conviction for larceny from the

person because such action did not constitute an invasion of the victim's person or immediate presence. *Id.* at 478–79.

The defendant relies on *Lee* and *Barnes*, arguing that the beer was neither attached to the Clerk nor within the Clerk's immediate proximity at the time it was taken. However, unlike *Lee* and *Barnes*, the beer that defendant took was on the counter near the cash register while the Clerk stood behind the counter calling police. Further, the Clerk never left the area and observed defendant remove the beer from the counter. Because the beer remained “under the [Clerk's] eye,” a jury could reasonably find that it remained under the Clerk's protection. *See Greene*, 251 N.C. App. at 632; *Buckom*, 328 N.C. at 318.

Because the Clerk's observation of and proximity to defendant taking the beer from the counter constitutes sufficient evidence from which a reasonable jury could find that the beer was in the Clerk's immediate presence and under his protection or control, the evidence was sufficient to satisfy the “from the person” element of larceny from the person. *See Sheppard*, 228 N.C. App. at 269–70; *Hull*, 236 N.C. App. at 422.

V. Conclusion

For the foregoing reasons, the trial court did not err in instructing the jury on the charge of larceny from the person. Thus, defendant received a fair trial free from error.

NO ERROR.

Judges GORE and MURRY concur.

STATE V. RAINEY

Opinion of the Court

Report per Rule 30(e).